

REMARKS

In light of the amendments above, the application has been put in condition for allowance.

Status of the Claims

Claims 2 to 11, 21-28, and 30-33 were acted upon by the Examiner. Claims 21-28 have been cancelled. Claim 31 has been amended to more clearly point out that the claim is directed to a method of preserving transfected bone marrow stromal cells. No claims have been added. Accordingly, Claims 2-11, and 30-33 are presented for examination.

ARGUMENTS

The 35 U.S.C. §§ 102 and 103 Rejections

Claims 21-28 have been rejected under 35 U.S.C. §102(b) as being anticipated by, or in the alternative, under 35 U.S.C. §103(a) as being obvious over various combinations of the following references Greenberger et al. (EP 0381490), Lozier et al. (Hum Gene Ther 1994), Newman (US 6,020,188), and Greenberg et al. (US 5,849,287 or US 5,993,801 or US 6,258,354). The Examiner asserts that although Greenberger et al. (EP 0381490) does not disclose a transfected BMSC which has been cryopreserved, the transfected BMSCs of Greenberger et al. (EP 0381490) are indistinguishable from the thawed BMSCs of Claims 21, 22, 24-27, and 34.

Claims 21-28 have been canceled. In light of the cancellation of claims 21-28, these rejections are now moot.

The Obviousness-type Double Patenting Rejections

Claims 21, 22, 24-27 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of US 5,849,287 or claims 1-19 of US 5,993,801 or claims 1-9 of US 6,258,354.

Claims 21, 22, 24 to 27 have been canceled. In light of the cancellation of claims 21, 22, 24-27, these rejections are now moot.

The Objections to Claims 2 to 11 and 31 to 33

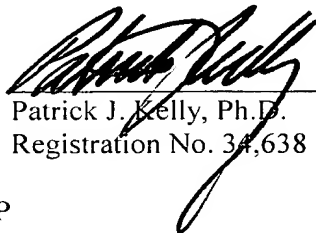
Claim 31 has been objected to because the preamble of the claim is directed to preserving any bone marrow stromal cells (BMSCs) whereas the body of the claim is drawn to preserving transfected BMSCs. Claims 2-11, 30, 32, and 33 have been objected to as being dependent upon an objected base claim, but would be allowable if the base claim is properly amended.

Applicants have amended claim 31 to recite, "A method for preserving transfected bone marrow stromal cells (BMSCs) comprising" Accordingly, applicants respectfully request that the objection to claim 31 and dependent claims 2-11, 32 and 33 be withdrawn.

Conclusion

Applicants have canceled the claims with pending rejections. Claim 31 has been amended to address the Examiner's objection. Accordingly, prompt allowance of the remaining claims is respectfully requested.

Respectfully submitted,



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